



FEB 12 2009

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In Re: Patent Term Extension  
Application for  
U.S. Patent No. 5,968,973

### APPLICATION NOT ELECTED

The application for patent term extension for U.S. Patent No. 5,968,973, claims of which cover the human drug product VEREGEN®, also known as POLYPHENON® E, (sinecatechins) Ointment 15%, is dismissed.

A Reply to Notice of Final Determination and Requirement for Election was filed on February 6, 2009, in the application for patent term extension for U.S. Patent No. 5,795,911, claims of which also cover the human drug product VEREGEN®(sinecatechins). The Reply states that "Applicants elect USP 5,795,911 as the patent for which the patent term extension will be granted."

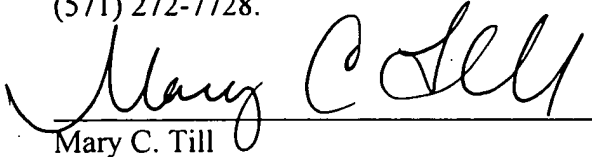
Thus, the application for patent term extension for U.S. Patent No. 5,795,911 will be extended based upon the regulatory review period of VEREGEN® (sinecatechins). Since only one patent may be extended based upon the regulatory review period of a product, the application for patent term extension for 5,968,973 is dismissed.

A single request for reconsideration of this dismissal of the application for patent term extension may be made if filed within one month of the date of this notice. Extensions of time under 37 CFR § 1.136(a) are not applicable to this time period.

Any correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Hatch-Waxman PTE      By FAX: (571) 273-7728  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450.

Telephone inquiries related to this determination should be directed to Raul Tamayo at (571) 272-7728.

A handwritten signature in cursive script, reading "Mary C. Till", written over a horizontal line.

Mary C. Till  
Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy

cc: Office of Regulatory Policy  
Food and Drug Administration  
10903 New Hampshire Ave., Bldg. 51, Rm. 6222  
Silver Spring, MD. 20993-0002

Attention: Beverly Friedman

RE: VEREGEN®, also known as  
POLYPHENON® E, (sinecatechins)  
Ointment 15%  
FDA Docket No.: 2007E-0458